



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1590 of 2004

IN THE MATTER OF THE ESTATE OF WILLY KARIUKI WANJIRU, (DECEASED)

R U L I N G

This is an objection by one Esther Mumbi who had filed this Summons for Revocation of a Grant of Letters of Administration issued to the Respondent herein, Margaret Wanjiru Kariuki on 24.10.2000. The summons for Revocation is dated 22.5.2004 and is based on the grounds that: -

- (a) The applicant was not included in the proceedings to obtain the grant
- (b) The grant was obtained fraudulently and was based on untrue facts
- (c) The grant was obtained without disclosing that the deceased had a wife in the applicant and two children who were entitled to the grant in first priority against the respondent.

The applicant/objector's case as contained in her evidence adduced in this court and also in the Supporting Affidavit, is that she was married to the deceased in November 1999 according to Kikuyu Customary Law. That she lived with him as husband and wife until he died through a motorcycle accident in which she herself narrowly missed death on 25.2.2000. She further testified that in 1999 when she and her deceased husband Willy Kariuki Wanjiru were already living together, the Respondent Margaret Wanjiru Kariuki, as the mother of the deceased, accompanied by several other women and Willy Kariuki Wanjiru himself visited her parent's house where they enjoyed meals with them. That the Respondent's group then collected the applicant's clothes according to custom whereupon they declared that the applicant was from that moment in time, been accepted as the wife of respondent's son, Willy Kariuki Wanjiru who would pay dowry later.

The applicant further testified that thereafter she lived and cohabited with the deceased as husband and wife until the motor-cycle accident which took his life. That she was on the fateful day riding with him and was immediately taken to Kenyatta National Hospital for medical treatment while soon thereafter the respondent and his other sons and relatives were making funeral arrangements. She also testified that during the funeral she was collected from the hospital to attend it and she attended it as the deceased's wife and was so included in the written funeral programme, Exhibit 3. That she addressed the funeral large meeting of relatives and friends as such wife. That the programme had been prepared by the committee consisting of the respondent herself, of her sons who are brothers of the deceased and other relatives including some of the Respondent's witnesses.

The applicant further testified that after the funeral the respondent and applicant's father took her back to Kenyatta National Hospital for further medical treatment. That it was while she was in hospital that she realized that she carried the deceased's pregnancy which on 7.11.2000 ended with a daughter known as Yvonne Wanjiru Daughter of Kariuki, being born – Exhibit 2. That Yvonne was her 2nd daughter, as she

had another child – Sheila Njeri before marriage.

The applicant also testified that it was while she was at Kenyatta National Hospital after returning there after the funeral, that the Respondent and her daughters in particular, developed hostility against her. That she failed to visit her at the hospital although she eventually shared paying her hospital bill with applicant's father. That when she was discharged from the hospital she was still incapable of physically supporting herself and she for that reason decided to go to her parent's home where her mother would nurse her until she would once more be able to stand by herself physically. That the Respondent resented her going to her parents despite the fact that she was not willing to help or support her in her sickness. She concluded her evidence in urging the court to find that she was properly married to the deceased and therefore was the most entitled to be issued with the Grant of Letters of Administration to his estate.

For the above reasons she urged the court to find that the Respondent was not entitled on her own to take out the Grant, especially without the applicant being joined as a co-petitioner. She accordingly urged the court to revoke the grant issued to the respondent and issue it to the applicant who argued that she was more entitled to it.

The objector called one witness – Esther Mumbi, her grandmother. The latter testified in confirmation of the Objector's evidence, that Respondent had visited their home with other women and in the company of the deceased, to collect the Objector's clothes according to Kikuyu custom. She also testified that the visit was a confirmation that the objector was from then properly married to the deceased and that the Respondent and her larger family had accepted her as the deceased's wife despite the fact that they had not paid dowry which they promised to pay in the near future.

In response to the Objector's case the Respondent denied through her evidence that the Objector had been married by her son, the deceased. She urged the court to find that she had been merely a girl friend to the deceased who in any case had not given her any child of the marriage. She agreed that she and other neighbourhood and family women had visited the objector's parent's home in 1999. She agreed that they had indeed gone there to collect her clothes according to custom but that such an occasion meant that the deceased wanted to marry the objector, which did not take place before he died. The Respondent also admitted that the committee which arranged the deceased's funeral, and in which she was a member with the deceased's brothers, included the objector's name as the deceased's wife. She also admitted that she paid for the Objector part of hospital bill, as the rest was paid by her father. She concluded her evidence by stating that had the Objector gone back to her home from hospital after being discharged she would have accepted her as the deceased's wife. Respondent called two other witnesses. George Njau Kariuki and Joseph Kimotho Kariuki.

George Njau Kariuki first testified that the deceased was married to Objector before he changed his mind and denied the fact. He then said that the Objector and the deceased lived together as lovers. He then conceded that during the deceased funeral the Objector was regarded by the family as the wife of the deceased. That she was included in the written funeral programme as deceased's wife by the funeral Committee in which the Respondent and the deceased's brothers were members and that the Objector accordingly spoke during the funeral as deceased's wife.

This witness also confirmed the women's and family visit to the Objector's parent's home in 1999 to collect her clothes according to Kikuyu Custom. The witness further agreed that such occasion meant that the Objector was from that moment in time married by the deceased who on the occasion was present among the visiting women.

I have carefully considered the evidence on the record and the submissions filed by the parties in support of the opposite sides. It is my opinion and my finding that there is more than ample evidence that the Objector Esther Mumbi, was properly married, in accordance with custom, to the deceased Willy Kariuki Wanjiru in 1999. If the two had started living together merely in a marital cohabitation, the same arrangement was transformed into a Kikuyu Customary marriage when the Respondent in company of other women, the deceased himself, visited her parents and collected her clothes. This fact was asserted by the Objector and confirmed by the Respondent and her witnesses. Several of these witnesses conceded

that the visit in 1999 cemented the hitherto loose cohabitation into a proper marriage.

The several witnesses also conceded and admitted that the Objector, after the 1999 visit aforementioned, lived as the wife of the deceased. This fact was also conceded when during the funeral of the deceased, the Respondent and her family members, including the brothers of the deceased, recognized the objector as the wife of the deceased and allowed her to address the funeral as the wife of the deceased. The respondent as well conceded, that she met part of the Objector's Medical bill on recognition that she was Respondent's deceased son's wife.

In my further findings, I rule that the Respondent's consequent change of mind about the Objector's marital status did not change the actual status. Examination of the facts and the evidence before me suggest that the Respondent altered her views about the Objector's marital status only when the issue of the deceased's estate or further estate as might be forthcoming from possible compensation for the deceased's death, arose and became a possibility. This, as the evidence suggests, led her to file in court a claim for general damages arising from the death of the deceased.

For the above reasons, I am persuaded by the evidence on record on the balance of probability that the grant of letters of administration should first and foremost have been granted to the Objector herein as deceased's wife and not to the Respondent. While the Respondent might have qualified to be appointed a co-administrator, she was not entitled to be so appointed in exclusion of the Objector.

The view of the court presently, is however not to revoke the grant so issued to the Respondent but to vary it in such a way as to effectively include the Objector as a co-administrator. More so because of the presence of minor children. The orders

ORDERS

1. There is a declaration that the grant issued to the respondent Margaret Wanjiru Kariuki was issued fraudulently, relying on untrue allegations or facts which failed to disclose that the deceased was properly married to the Objector Esther Mumbi Kariuki otherwise also known as Esther Mumbi Muthama.
2. The grant of Letters of Administration issued to Margaret Wanjiru Kariuki on 24.10.2000 is hereby varied so as to include therein Esther Mumbi Muthama as the first co-petitioner jointly with Margaret Wanjiru Kariuki and the 2nd co-petitioner.
3. The Nairobi HCCC No. 184 of 2002 filed by the respondent is hereby ordered halted and the respondent is hereby ordered to withdraw the same forthwith.
4. The Objector is hereby ordered to enjoin the Respondent in Nairobi HCCC No. 1200 of 2002 as co-plaintiff before taking any further steps therein.
5. The Objector and the Respondent on being issued with a fresh grant of letters of Administration, may proceed to apply for confirmation while awaiting the result of Nairobi HCCC No. 1200 of 2002 which they are encouraged to prosecute as soon as it is possible.
6. Each party to bear own costs.

Dated and delivered at Nairobi this 3rd day of March, 2008.

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JUDGE